IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32 (2)(b)
Description of case

Criminal Appeal No. 244 of 2001
(Old No.1654 of 1985)

1. Ram Charan son of Nathu Singh (Since deceased)
2. Ummed Singh S/o Ram Charan

Both resident of Village Harkishanpur
P.S. Reher District Bijnore,

…… Appellants

Versus

The State ……. Respondents

Mr. S.K. Agrawal, Advocate assisted by Mr. Jitendra Choudhary, Advocate for the appellants.
Mr. Nandan Arya, Asstt. Government Advocate assisted by Mr. Rajeev Mohan, Brief Holder for the respondent-State.

Date of decision: 24th March, 2005

For the approval of:

Hon'ble Mr. Justice Irshad Hussain
Hon'ble Mr. Justice Prafulla C. Pant

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 244 of 2001
(Old No. 1654 of 1985)

1. Ram Charan son of Nathu Singh (Since deceased)
2. Ummed Singh S/o Ram Charan

Both resident of Village Harkishanpur
P.S. Reher District Bijnore,

…… Appellants

Versus

The State ……. Respondents

Mr. S.K. Agrawal, Advocate assisted by Mr. Jitendra Choudhary, Advocate for the appellants.
Mr. Nandan Arya, Asstt. Government Advocate assisted by Mr. Rajeev Mohan, Brief Holder for the respondent-State.

Coram : Hon'ble Irshad Hussain, J.
Hon'ble Prafulla C. Pant, J.

Dt: 24th March, 2005.

[Per Hon'ble Prafulla C. Pant, J.]

This appeal, filed under Section 374 of the Code of Criminal Procedure, 1973, is directed against the judgment and order dated 31.05.1983 passed by, learned Additional Sessions Judge / Special Judge, Nainital in Sessions trial No. 236 of 1983 convicting and sentencing each of the appellant Ram Charan and Ummed Singh under Section 302 of the Indian Penal Code, 1860, to undergo rigorous imprisonment for life.

2) The prosecution story, in brief is that one Nathu Singh (deceased) had two wives. Appellant Ram Charan is the son of the deceased from one of his wives and appellant Ummed Singh is son of Ram Charan. Informant Smt. Mungia (P.W. 2) is the

daughter of deceased from his second wife. About some eight years before the date of incident, Nathu Singh (deceased) had executed a will in respect of his 12½ bighas of land in favour of Sri. Ram, the minor son of Smt. Mungia (informant - P.W. 2). A couple of months before the date of incident Nathu Singh fell ill and sent a letter to his daughter Smt. Mungia intimating about his illness. Smt. Mungia came to her father's place where his father i.e. Nathu Singh expressed his desire to transfer rest of his land in her name as no one including his son were looking after him. On 16.09.1983 at about noon, Smt. Mungia (informant - P.W. 2) and her husband Lal Singh (P.W. 5) were taking Nathu Singh to Nadehi for treatment. When they reached near the field of Parasram they saw appellant Ummed Singh and Ram Charan coming towards them carrying gunny bags over their heads and laathies in their hands. On seeing the deceased with Mungia and her husband, they threw their bags on the ground and threatened Nathu Singh with the words – "*तू जमींन का बैनामा करने जा रहा है। हम करेगें तेरा बैनामा* " Thereafter, appellant Ummed Singh gave a laathi blow to Nathu Singh due to which Nathu Singh fell on the ground. He then climbed over his body and started hitting over his chest with his feet, as a result of which Nathu Singh died on the spot. Smt. Mungia and Lal Singh who tried to intervene were also given beating by the appellants. On their raising an alarm witness Subhash Chandra (P.W. 4), Vijaypal Singh alias Budhu (P.W. 3) and one Hori arrived at the scene. On this appellants fled towards village threatening them of dire consequences. Smt. Mungia (P.W. 2) leaving her husband near the dead body of Nathu Singh went towards village where she got First Information Report Ext. Ka. 3 written to Daljeet Singh, Pradhan of the village and thereafter went to police outpost Nadehi within the area of police station Jaspur to lodge the First Information Report. The said information was registered at 12:45 p.m. by Constable Mahendra Pal Singh (P.W. 7), who

prepared the check report Ext. Ka. 4 and made an entry at serial number 11 in the general diary (extract Ext. Ka. 5). The investigation was done by Sub Inspector, Surendra Pal Singh (P.W. 9) who recorded the statement of witnesses and after inspecting the place of occurrence prepared the site plan (Ext. Ka. 9). He also took two gunny bags of flour in his custody which were thrown by the appellants and prepared a memo Ext. Ka. 10 to the effect. An inquest report (Ext. Ka. 12) was also prepared by the Investigating Officer apart from preparing police form No. 13, a challan of dead body (Ext. Ka. 14), letter to the Superintendent Hospital requesting him for autopsy (Ext. Ka. 13), photo sketch of the dead body (Ext. Ka. 15). The dead body in a sealed packet was taken for postmortem by Constable Satyabir Singh (P.W. 6) and Constable Srawan Kumar. Thereafter, it appears, that the investigation was taken up by Sub Inspector Ajaipal Singh (P.W. 8) who recorded the statements of the remaining witnesses and on completion of the investigation, submitted charge-sheet (Ext. Ka. 7) against both the appellants.

3) The autopsy was conducted by Dr. S.K. Khanna (P.W. 10) on 17.09.1983 at about 11:00 a.m. on the body of the deceased. As per the postmortem report prepared by him, he found that deceased was an old man of thin built. Rigor mortis was present in both the upper and lower limbs. The abdomen was found distended. Eyes were open. He found following ante mortem injuries on the person of the deceased :-

i) Contusion 4" X 3½ " on the left side of the chest over upper part of the front side.

ii) Contusion 3 ½ " X 3" on the right side of chest at nearly middle outer side.

iii) Contusion 2 cm X 1 ½ cm on the right side of abdomen, below the ribs.

On the internal examination ribs Nos. 2, 3 and 6 on the life side which correspond to injury No. 1, and below injury No. 2, rib Nos. 4, 5, 6 and 7 were found fractured. Lungs of the deceased were lacerated and 350 ml. Of blood was present in both plural cavity. About 1 pint of blood was present in peritonial cavity. Gall bladder was lacerated at one place. In the opinion of the Medical Officer the cause of the death was the shock and hemorrhage as a result of the ante mortem injuries. Dr. S.K. Khanna (P.W. 10) proved the postmortem report (Ext. Ka. 16) prepared by him.

4) Informant - P.W. 2, Smt. Mungia, daughter of the deceased was examined medically on 16.09.1983 at 8:30 p.m. by Dr. S.C. Gupta (P.W. 1) and he found the following injuries on her person:-

i) ***Contusion 17 cm X 9 cm on the back of the left upper arm, hot, tender and red.***

ii) ***An abraded contusion 3 cm X 8 cm on the right shoulder, red, hot and tender.***

iii) ***An abraded contusion 2 cm X 2 cm on the dorsum on right forearm, 5 cm above the wrist joint, red, hot and tender.***

iv) ***Contusion 19 cm X 2 cm on the lateral aspect of the left thigh. Oblique, red, hot and tender.***

The Medical Officer, Dr. S.C. Gupta was of the opinion that these injuries were simple in nature and had been caused by some blunt weapon. He proved the injury report Ext. Ka. 1 prepared by him. On the same day i.e. 16.09.1983 at about 8:50 p.m. on medical examination of Lal Singh (P.W. 5), complained of pain on the right hip joint. However, the Medical Officer did

not find any external injury on his body. The report Ext. Ka. 2 was proved by the Doctor in this regard.

5) On receiving the charge-sheet the concerned Magistrate, after giving necessary copies to the accused (appellants), committed the case to the court of Sessions, where it was registered as sessions trial No. 236 of 1983. The said Sessions trial case was transferred to the court of Addl. Sessions Judge (Special Judge) Nainital, who after hearing, framed the charge against both the accused (appellants) on 29.05.1984 relating to the offence punishable under Section 302 of the Indian Penal Code. Both the accused (Appellants) pleaded not guilty and claimed to be tried. Where after, the Addl. Sessions Judge examined as many as nine witnesses namely, Dr. S.C. Gupta (P.W. 1), Smt. Mungia (P.W. 2), Vijaipal Singh alias Budhu (P.W. 3), Subhash Chandra (P.W. 4), Lal Singh (P.W. 5), Constable Satyabir Singh (P.W. 6, who filed his affidavit), Constable Mahendrapal Singh (P.W. 7), Sub Inspector Ajaipal Singh (P.W. 8), Station Officer, Surendra Pal Singh (P.W. 9) and Dr. S.K. Khanna (P.W. 10). Out of the witnesses of fact, Subhash Chandra (P.W. 4) did not support the prosecution story and on the request of prosecution, was declared hostile. However, this witness also supported the prosecution to the extent that he saw accused-appellants Ram Charan and Ummed Singh beating Nathu Singh with laathi, who fell on the spot and died then and there. He has not supported the prosecution story only to the extent of beating the deceased by one of the appellant with the kicks over the chest. Rest of the eye witnesses viz. Smt. Mungia (P.W. 2), Vijaipal Singh (P.W. 3) and Lal Singh (P.W. 5) corroborated the entire prosecution story narrated above. No evidence was adduced in defence on behalf of accused after they were examined under Section 313 of the Code of Criminal Procedure, 1973. Learned Sessions Judge after hearing the

parties found both the accused (appellants) guilty and convicted them under Section 302 of the Indian Penal Code on 31.05.1085 and after hearing on sentence the same day sentenced each of them to life imprisonment. Aggrieved by said judgment and order dated May 31, 1985, the appellants have filed this appeal before the High Court of judicature at Allahabad from where this appeal was received by transfer under Section 35 of the U.P. Re-organization Act, 2000.

6) We heard learned counsel for the parties at length and perused the entire evidence on record.

7) Mr. S.K. Agarwal, learned Advocate appearing on behalf of the appellants submitted that the First Information Report was ante timed. In this connection, he drew our attention to the inquest report (Ext. Ka. 12) and copy of the extract of the general diary (Ext. Ka. 8). We have examined the documents on the aforesaid point. Check report (Ext. Ka. 4) of the First Information Report shows that the same was lodged with the police station at 12:45 afternoon. The document further indicates that the entry regarding the crime has been made in the general diary at about 15:45 hours on the same day with the police station Jaspur as indicated in Ext. Ka. 8. The difference between time of 12:45 of recording First Information Report and making entry of crime number at 15:45 is different because the First Information Report was lodged with the police outpost Nadehi of police station Jaspur and crime number was entered at the police station Jaspur. As far as the inquest report (Ext. Ka. 12) is concerned, it clearly indicates the date and time 16.09.1983 at about 12:45 p.m. of lodging of the First Information Report and 16.09.1983 at 1:30 p.m. as a time when the Investigating Officer proceeded from police station. As such, in our opinion, there is

nothing on the record to show that the First Information Report was ante timed.

8) Second contention on behalf of the appellant made before us is that there was undue delay in medical examination of Smt. Mungia (informant – P.W. 2) and Lal Singh (P.W. 5). Date and time of the occurrence is 16.09.1983 just before noon as narrated in the First Information Report (Ext. Ka. 3) and the informant, Smt. Mungia and her husband Lal Singh were medically examined on same day i.e. 16.09.1983 at 8:30 p.m. and 8:50 p.m. respectively, as is clear from Ext. Ka. 1 and Ext. Ka. 2. Learned counsel for the appellant argues that this delay is unreasonable and creates doubt in prosecution story as narrated in the First Information Report. We are unable to accept the submissions, for the reason that from the evidence on record, it is clear that when the incident took place just before noon, Smt. Mungia (P.W. 2) left the dead body of her father on the spot and whet to village where she got scribed the First Information Report by Daljeet Singh, Pradhan of the village and then she went to the police utpost Nadehi to lodge the First Information Report. Her injuries as well as the injuries of her husband Lal Singh were not of the nature which needed immediate medical assistance as such medical examination on their person after about nine hours does not create any reasonable doubt in the prosecution story. Since the main offence is that of murder of Nathu Singh, as such medical examination of eye- witnesses even if done after some delay the same cannot be said to be fatal to the prosecution story.

9) The third contention raised on behalf of the appellant is that there was absence of immediate motive, as such the prosecution story as narrated by the prosecution witnesses should not be believed. On examination of the evidence, we find that not only the First Information Report but also the statements of

Smt. Mungia (P.W. 2) and Lal Singh (P.W. 5) show that the deceased had, some eight years before the incident, executed a will in respect of 12 ½ bighas of his land in favour of Sri Ram, a minor son of Smt. Mungia (informant – P.W.2) i.e. in favour of his grandson. It is pertinent to mention here that the appellant Ram Charan is son of the deceased and appellant Ummed Singh is son of Ram Charan, as such appellant Ram Charan is step brother of Smt. Mungia (P.W. 2). It has further come in evidence that the accused (appellants) were apprehending transfer of remaining land by the deceased in favour of his daughter and son-in-law and on seeing him with them they threatened Nathu Singh (deceased), before assaulting him. In these circumstances, we see no force in the contention of the learned counsel for the appellant that there was absence of motive to commit the offence.

10) The fourth point contended before us on behalf of the appellant is that while the eyewitness Vijaipal Singh (P.W. 3) has stated that the accused Ram Charan caught hold of deceased Nathu Singh while Ummed Singh started kicking on the neck of the deceased, the injuries as mentioned in the postmortem report, Ext. Ka. 16, do not corroborate the same. We have scrutinized the ante mortem injuries mentioned in the post mortem report with the statements of the eyewitnesses. The ante mortem injuries as mentioned earlier before us show that the injuries were found over the chest of the deceased and ribs were found broken. No doubt, though the P.W. 3, Vijaipal Singh has stated that Ummed Singh was jumping over the neck of the deceased but P.W. 2, Smt. Mungia has stated that accused – appellant Ummed Singh was jumping over the body of the deceased and P.W. 5, Lal Singh has stated that the accused –appellant Ummed Singh was jumping over the deceased. If we take into account size of foot of an adult person and the distance between the chest

and the neck of a person the contradiction pointed out on behalf of the defence cannot be said to be the material one. Particularly, when the accused was kicking / jumping an act which was not the single act. Rather, in our view the contusions found as ante mortem injury on the chest and injury as to the broken ribs in the, Ext. Ka. 16, prove the prosecution story as true.

11) The fifth point argued before us by the learned counsel for the appellant is that in the medical examination report, Ext. Ka. 1 while recording the injuries of Smt. Mungia (P.W. 2), Dr. S.C. Gupta (P.W. 1) has recorded the injuries as 'hot' at 8:30 p.m. Learned counsel submitted in this regard that the injury cannot be said to be hot after nine hours of the incidence. We feel that the report needs to be read as a whole and while examining the injuries No. 1, 2, 3 and 4 on the person of Smt. Mungia, which are contusions, the Medical Officer has recorded each injury as 'red, hot and tender'. Expression 'hot' refers to fresh. Apart from this if an injury is tender that indicates some swelling in the injury and if there is swelling there is no reason to disbelieve the Medical Officer that he found it hot even after eight and nine hours.

12) Referring to the inquest report (Ext. Ka. 12), on behalf of the appellant, it was pointed out that the apparent injuries before postmortem shown in inquest report are different than what the Medical Officer found at the time of autopsy. To some extent the injuries mentioned in inquest report are certainly different than what is mentioned in the postmortem report, but merely for the reason that at the time of preparation of inquest report it was found that the blood was oozing from the mouth and abrasion was seen at the left leg, it cannot be said that this difference is sufficient to throw whole of the prosecution story, particularly, when there is reliable and natural evidence adduced by as many

as three eyewitnesses relating to the manner of commission of crime by the accused-appellants.

13) Lastly, it is also argued that Vijaipal Singh (P.W. 3) was a chance witness and his statement should not be believed. We have examined the statement of Vijaipal Singh (P.W. 3). He is resident of village Harkrishanpur and the deceased was also being taken by Smt. Mungia (P.W. 2) and her husband Lal Singh (P.W. 5) from Harkrishanpur. The scribe of the First Information Report is also Pradhan of village Harkrishanpur, as such the presence of Vijaipal Singh alias Budhu (P.W. 3) does not appears to be suspicious as the incidence has taken place at about noon by the side of a pathway outside the village.

14) In ***State of U.P. Vs. Hari Om; 1998 A.I.R.S.C.W. Pg. 4130*** referred on behalf of the appellant, it is observed that mere demand by son of his share in father's property cannot be said to have established animosity leading to criminal intention to kill the father. We have gone through said judgment. The facts of the present case are different than the case referred. Here, the animosity on the part of the appellants is very much clear from the evidence on record as they were living separately from deceased for almost 40 years and some either years before the incident the deceased had executed will in respect of his 12 ½ bighas of land in favour of the son of his daughter i.e. his grandson. On the fateful day on seeing Nathu Singh proceeding with his daughter and son-in-law, the appellant before commission of crime as stated by Smt. Mungia (P.W. 2), Subhash Chandra (P.W. 4) and Lal Singh (P.W. 5) uttered "*तू जमीन का बैनामा करने जा रहा है। हम करेगें तेरा बैनामा,*" establish the intention to kill Nathu Singh (deceased), as such above reported decision does not help the appellant.

15) From the discussion as above, after perusing the entire evidence on record, we are in agreement with the learned Sessions Judge that the accused-appellants are guilty of the commission of murder of Nathu Singh. As such, the appeal is liable to be dismissed.

16) During the pendency of this appeal appellant Ram Charan has died in February 1987 and as against him the appeal stands abated. As against appellant Ummed Singh the appeal is dismissed. He is on bail. He shall be taken into custody by the court concerned for serving out the sentence.

(Prafulla C. Pant, J.) **(Irshad Hussain, J.)**

Dt. 24th March, 2005
H. Negi